

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NORTH DAKOTA**

In Re: GENERATIONS ON 1ST, LLC, Debtor.	Case No.: 25-30002 Chapter 11
In Re: PARKSIDE PLACE, LLC, Debtor.	Case No.: 25-30003 Chapter 11

**OBJECTION OF RED RIVER STATE BANK TO DEBTORS'
MOTIONS TO REJECT MANAGEMENT AGREEMENT**

INTRODUCTION

Red River State Bank (“RRSB”), by and through the undersigned counsel, hereby objects (the “Objection”) to the Motions to Reject Management Agreement filed by Debtor Generations on 1st, LLC (“Generations”), *see* Generations ECF No. 11, and Debtor Parkside Place, LLC (“Parkside”). *See* Parkside ECF No. 11.¹ In support, RRSB states as follows:

THE MANAGEMENT AGREEMENTS

I. Generations

RRSB and Generations are parties to certain Promissory Notes as follows:

- a. Promissory Note dated March 15, 2021, in the original principal sum of \$1,565,200.00 (“First Generations Note”). The maturity date of the First

¹ RRSB shall collectively refer to Generations and Parkside as “Debtors” and their respective Motions for Leave to Use Cash Collateral as the “Motions”.

Generations Note was March 15, 2023. Generations ECF No. Claim 1 Part 2, Ex. A.

- b. Promissory Note dated September 14, 2021, in the original principal sum of \$2,976,430.98 (“Second Generations Note”). The maturity date of the Second Generations Note was March 31, 2022. Generations ECF No. Claim 1 Part 2, Ex. B.
- c. Promissory Note dated October 14, 2021, in the original principal sum of \$1,094,025.15 (“Third Generations Note”). The maturity date of the Third Generations Note was March 31, 2022. Generations ECF No. Claim 1 Part 2, Ex. C.
- d. Promissory Note dated November 9, 2021, in the original principal sum of \$424,259.84 (“Fourth Generations Note”). The maturity date of the Fourth Generations Note was March 31, 2022. Generations ECF No. Claim 1 Part 2, Ex. D.
- e. Promissory Note dated December 8, 2021, in the original principal sum of \$843,168.59 (“Fifth Generations Note”). The original maturity date of the Fifth Generations Note was March 31, 2022. Generations ECF No. Claim 1 Part 2, Ex. E.
- f. Promissory Note dated January 5, 2022, in the original principal sum of \$653,729.65 (“Sixth Generations Note”). The original maturity date of the Sixth Generations Note was December 31, 2022. Generations ECF No. Claim 1 Part 2, Ex. F.
- g. Promissory Note dated February 3, 2022, in the original principal sum of \$274,043.60 (“Seventh Generations Note”). The original maturity date of the Seventh Generations Note was December 31, 2022. Generations ECF No. Claim 1 Part 2, Ex. G.
- h. Promissory Note dated April 17, 2023, in the original principal sum of \$8,100,000.00 (“Eighth Generations Note”). The original maturity date of the Eighth Generations Note is December 1, 2026. Generations ECF No. Claim 1 Part 2, Ex. H.
- i. Promissory Note dated April 17, 2023, in the original principal sum of \$561,365.10 (“Ninth Generations Note”). The original maturity date of the Ninth Generations Note was March 31, 2023. Generations ECF No. Claim 1 Part 2, Ex. I.

(hereinafter, collectively, the “Generations Notes”).

To secure payment on the Generations Notes, Generations made in favor of, executed, and delivered to RRSB a Constructions Mortgage - One Hundred Eighty Day Redemption (the “First RRSB Mortgage”) on the following-described real property:

Generations on First Addition to the City of Watertown, Codington County, South Dakota, according to the recorded plat thereof.

Street Address: 26 1st Ave. SW, Watertown, SD 57201

Tax ID: 9580

(hereinafter, the “Generations Real Property”). The First RRSB Mortgage was properly executed, acknowledged, and recorded in Book 990 on Page 7262 in the office of the Register of Deeds of Codington County, South Dakota, having been recorded on August 3, 2021, at 10:09 a.m. Generations ECF No. Claim 1 Part 2, Ex. Q.

On or about April 17, 2023, as additional security for Generations Notes, Generations made in favor of, executed, and delivered to RRSB an Assignment of Rents (the “Generations AOR”) with respect to the Generations Real Property. The Generations AOR was properly executed, acknowledged, and recorded in Book 992 on Page 154 in the office of the Register of Deeds of Codington County, South Dakota, having been recorded on May 5, 2023, at 10:12 a.m. Generations ECF No. Claim 1 Part 2, Ex. S.

RRBS began enforcement of its assignment of rents set forth in both the RRSB Mortgage and the Generations AOR in February 2024 by sending notice to Generations and to all known tenants of the Generations Real Property.

On or about October 1, 2024, a receiver was appointed to take possession of the rents and mage the Generations Real Property via an Order Appointing Receiver in the state court action of RRSB v. Generations et al., Circuit Court, County of Codington, Third Judicial

Circuit, State of South Dakota. Generations ECF No. Claim 1 Part 2, Ex. T. In conjunction with the state court order, RRSB entered into a Receivership and Management Agreement (the “Generations Management Agreement”) with HME Companies, LLC (“HME”) for HME to perform as the receiver appointed for the Generations Real Property. *See* Generations ECF No. 11, Ex. 1.

II. Parkside

RRSB and Parkside are parties to a Promissory Notes of date December 13, 2021, in the original principal amount of \$4,2000,000.00 (the “Parkside Note”). Parkside ECF No. Claim 1 Part 2, Ex. A.

To secure payment on the Parkside Note, Parkside made in favor of, executed, and delivered to RRSB a Mortgage Collateral Real Estate Mortgage One Hundred Eighty Day Redemption (the “Parkside Mortgage”) on the following-described real property:

Parkside Place Addition to the City of Watertown, Codington County, South Dakota, according to the recorded plat thereof.

Street Address: 82nd St. NE, Watertown, SD 57201

Tax ID: 9358

(hereinafter, the “Parkside Real Property”). The Parkside Mortgage was properly executed, acknowledged, and recorded in Book 990 on Page 8073 in the office of the Register of Deeds of Codington County, South Dakota, having been recorded on December 15, 2021, at 10:11 a.m. Parkside ECF No. Claim 1 Part 2, Ex. I.

On or about December 13, 2021, as additional security for Parkside Note, Parkside made in favor of, executed, and delivered to RRSB an Assignment of Rents (the “Parkside AOR”) with respect to the Parkside Real Property. The Parkside AOR was properly executed,

acknowledged, and recorded in Book 990 on Page 8076 in the office of the Register of Deeds of Codington County, South Dakota, having been recorded on December 15, 2021, at 10:14 a.m. Parkside ECF No. Claim 1 Part 2, Ex. J.

RRBS began enforcement of its assignment of rents set forth in both the Parkside Mortgage and the Parkside AOR in February 2024 by sending notice to Parkside and to all known tenants of the Parkside Real Property.

On or about October 1, 2024, a receiver was appointed to take possession of the rents and mage the Parkside Real Property via an Order Appointing Receiver in the state court action of RRSB v. Parkside et al., Circuit Court, County of Codington, Third Judicial Circuit, State of South Dakota. Parkside ECF No. Claim 1 Part 2, Ex. K. In conjunction with the state court order, RRSB entered into a Receivership and Management Agreement (the “Parkside Management Agreement”) with HME for HME to perform as the receiver appointed for the Parkside Real Property. *See* Parkside ECF No. 11, Ex. 1.

LAW AND ARGUMENT

Debtors’ Motions request orders from this Court allowing Debtors to reject the Management Agreements under Section 11 U.S.C. § 365(a). *See generally* ECF Nos. 11. Because Debtors lack authority to reject a contract to which they are not a party, this Court should deny the Motions.

Under Section 365(a), a debtor in possession, “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). As made clear by the plain language of Section 365(a), a debtor in possession may only reject an executory contract if an executory contract “of the debtor.” *Id.* (emphasis added). If the debtor was not a party to the contract sought to be rejected, Section 365(a) does not allow a

debtor in possession to “reject” a contract to which it is not a party. *See, e.g., In re Green*, 504 B.R. 675, 679 (Bankr. S.D. Ga. 2014) (“Section 365 allows the trustee or debtor-in-possession to ‘assume or reject any executory contract or unexpired lease of the debtor.’ 11 U.S.C. § 365(a) (emphasis added). It does not allow a debtor to assume or reject contracts and leases to which the debtor was not a party.” (emphasis in original)).

Here, Debtors admit that they are not parties to the respective Management Agreements. *See* ECF Nos. 11, at 4 (“RRSB and HME entered into the [Management] Agreement[s], providing the economic terms upon which HME would manage the two properties.”); *see also id.* (The Management “Agreement[s] [are] between RRSB and HME[.]”). Because Debtors are not parties to the contracts they seek to reject, Section 365(a) does not provide a basis for their Motions. And Debtors have not provided any alternative authority for this Court to authorize the rejection of contract to which Debtors are not parties. In other words, Debtors fail to provide a basis for the relief requested.

CONCLUSION

For the foregoing reasons, RRSB respectfully requests the denial of Debtors’ Motions.

Dated this 15th day of January, 2025.

VOGEL LAW FIRM

BY:/s/ Drew J. Hushka

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ATTORNEYS FOR RED RIVER STATE
BANK

**Re: Generations On 1st LLC
Case No. 25-30002**

**Parkside Place, LLC
Case No. 25-30003**

STATE OF NORTH DAKOTA)
) SS **CERTIFICATE OF SERVICE**
COUNTY OF CASS)

Sonie Thompson, being first duly sworn, does depose and say: she is a resident of Cass County, North Dakota, of legal age and not a party to or interested in the above-entitled matter.

On January 15th, 2025, affiant caused the following document(s):

OBJECTION OF RED RIVER STATE BANK TO DEBTORS' MOTIONS TO REJECT MANAGEMENT AGREEMENT

to be served electronically to the following:

ALL ECF Participants.

/s/ Sonie Thompson
Sonie Thompson

Subscribed and sworn to before me this 15th day of January, 2025.

(SEAL)

Jill Nona
Notary Public, Cass County, North Dakota